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24 N. Main Street
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Dias, Liyanagamage Ranganath Prabashwara

University of Rochester

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MONROE COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

In the matter of the Application of Liyanagamage Ranganath Prabashwara Dias, Petitioner, against University of Rochester, Respondent.	INDEX NO. MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION TO FILE UNDER SEAL **Oral Argument Requested**

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION TO FILE UNDER SEAL

PRELIMINARY STATEMENT

Petitioner Liyanagamage Ranganath Prabashwara Dias ("Dr. Dias") is a tenure-track assistant professor at the University in the Departments of Mechanical Engineering and Physics and Astronomy at the University of Rochester (the "University"). Dr. Dias is challenging the University's decision to investigate charges against him by appointing a biased committee without the requisite competence. In doing so, the University ignored its own policies and procedures related to investigations of tenure-track faculty. The University sets forth its policies regarding matters such as these in their Faculty Handbook (the "Handbook"). The University failed to follow Handbook procedures in two ways: (1) because the investigation relates to Professor Dias's academic freedom, a grievance committee must assess evidence and develop a factual record, and (2) because the investigation jeopardizes Professor Dias's tenure track, the University committee on Tenure and Privileges ("UCTP") must evaluate that factual record before any decision is made concerning Dr. Dias's employment.

Dr. Dias faces immediate and irreparable harm. Because of the biased findings of the University's Research Misconduct Investigation ("RMI"), it is possible that Professor Dias will be terminated at any time without enjoying the Handbook's mandated due process. The University convened the RMI in disregard of its own policies, and therefore acted arbitrarily and capriciously. For these and the following reasons, Professor Dias's Article 78 Petition for an order to show cause should be granted.

STATEMENT OF FACTS

Petitioner, Dr. Dias, respectfully requests the court review the Verified Petition, the accompanying affidavit of Dr. Dias, affirmation of J. Morgan Levy, Esq and all relevant exhibits for a full recitation of the facts of this matter. The National Science Foundation (herein after

"NSF") notified Dr. Dias's employer, the University of Rochester, (hereinafter "the University") that an allegation of research misconduct was made against him. The University of Rochester subsequently engaged in an investigation into Dr. Dias's research. The investigation was conducted by individuals inherently biased against Dr. Dias and in a manner contrary to basic due process principles and the University's commitment to shared governance. Importantly, the NSF dictates that all information related to the investigation be kept confidential. Because information related to the investigation is woven throughout all of Dr. Dias's pleadings he respectfully requests this court seal the entire record of this case.

LEGAL ARGUMENT

While New York state courts' default position is that the documents filed in connection with a lawsuit become available to the public, (N.Y. Jud. Law §§ 255, 255-b), the court can seal any court record, defined as anything filed with the clerk that is associated with the action. 22 N.Y.C.R.R. § 216.1(b). To seal information from the public—whether a portion of a document or the entire case file—there must be good cause to do so. 22 N.Y.C.R.R. § 216.1(a). The court will weigh reasons for sealing against a presumption in favor of the public's interest in open access. *See Mfrs. & Traders Trust Co. v Client Server Direct, Inc.*, 156 AD3d 1364, 1365-1366 (4th Dept 2017). Factors courts may weigh when making sealing decisions include whether:

- The record contains privileged documents.
- The record contains confidential data.
- The filings would unduly embarrass or prejudice a party.
- Sealing would promote the public policy of safeguarding certain information from the public.

Weinstein, Korn & Miller, CPLR Manual § 34.02.

I. The court should grant Dr. Dias's request to seal all records related to this Article 78 proceeding because information necessarily included in Dr. Dias's submission has been deemed confidential by the National Science Foundation.

The National Science Foundation notified the University of Rochester and Dr. Dias that pursuant to 45 CFR § 689 information acquired during an investigation into research misconduct must be kept strictly confidential. *See* Affidavit of Dr. Dias, Exhibit A. Because the subject matter of petitioner's request is this very same investigation, confidential information prohibited by disclosure by the NSF is contained throughout all of the documents. Therefore there is no less restrictive method to preserve the confidential information contained in petitioner's papers.

CONCLUSION

Because Dr. Dias has established the record contains information prohibited from release by the NSF, he respectfully requests this court allow Dr. Dias seal the entirety of the record related to this matter.

Dated: Rochester, New York
February 14, 2024

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